

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, ) **REDACTED TRANSCRIPT**  
)  
Plaintiff, )  
)  
vs. ) CAUSE NO. 1:20-cr-00112-JMS-KMB  
) Indianapolis, Indiana  
TONY CUSHINGBERRY (01), ) Wednesday, May 31, 2023  
A/K/A TONY CUSHINGBERRY-MAYS, ) 1:00 o'clock p.m.  
)  
Defendant. )

Before the  
HONORABLE JANE MAGNUS-STINSON

TRANSCRIPT OF SENTENCING HEARING

APPEARANCES:

FOR THE GOVERNMENT: United States Attorney's Office  
By: Peter A. Blackett and  
Jayson W. McGrath  
10 West Market Street, Suite 2100  
Indianapolis, Indiana 46204

FOR THE DEFENDANT: Indiana Federal Community Defenders  
By: Joseph Martin Cleary  
Dominic David Martin and  
Sara Varner  
111 Monument Circle, Suite 3200  
Indianapolis, Indiana 46204

ALSO PRESENT:

The Defendant in person.

COURT REPORTER: Jean A. Knepley, RDR, CRR, CRC, FCRR  
46 East Ohio Street, Room 301  
Indianapolis, Indiana 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND  
COMPUTER-AIDED TRANSCRIPTION

*(In open court.)*

2 THE COURT: We are here under Cause No. 1:20-cr-112.  
3 This is the case of the United States v. Tony Cushingberry.  
4 Mr. Cushingberry is present in person with counsel, Ms. Varner,  
5 Mr. Martin, Mr. Cleary. The Government is present by Assistant  
6 United States Attorneys Peter Blackett, Jayson McGrath, and  
7 Joseph De St Jean from the United States Postal Service. There  
8 he is in the center. Okay. The Court has been assisted by  
9 probation officer Ryan Harrold, who prepared the presentence  
10 report; and our court reporter is Jean Knepley.

11 So this matter is before the Court for sentencing.  
12 Previously Mr. Cushingberry pled guilty, and the Court accepted  
13 that plea just a little under a year ago. Does your client  
14 wish to proceed with sentencing, Ms. Varner?

15 MS. VARNER: Yes, Your Honor.

16 THE COURT: All right. Is the Government prepared to  
17 proceed?

18 MR. McGRATH: Yes, Your Honor.

19                   THE COURT: All right. So the Court has reviewed  
20 before today's proceeding the following documents: The  
21 presentence report that was prepared in final form at  
22 Docket 79, and I note that that has been of record since August  
23 of last year. Does your client -- did your client receive it  
24 more than 35 days before today's date, Ms. Varner?

25 MS. VARNER: Yes, Your Honor.

1 THE COURT: All right.

2 And the court has reviewed the following documents in  
3 advance of hearing -- of the hearing today: The victim impact  
4 statements submitted by the Government at Docket 89 are what  
5 the Court would consider the actual victim impact statements  
6 from the family of the decedent. And then, dozens of letters  
7 were submitted by the Government, mostly from the U.S. postal  
8 community concerning the matter before the Court at this time.

9 Defendants submitted sentencing memorandum at  
10 Docket 95, which the Court has reviewed. In addition to that  
11 memorandum and in support of that memorandum, the Defense also  
12 submitted a U.S.B. with a video presentation that the Court has  
13 reviewed.

14 The Court reviewed the memorandum in support of  
15 sentencing submitted by the Defense at Docket 98, and then,  
16 responsive to an argument raised by the Government, the Defense  
17 submitted last night submission in support of sentencing at  
18 Docket 108, which I have also reviewed.

19 The Government's sentencing memorandum, in addition to  
20 the victim impact statements, was submitted at Docket 102, and  
21 the Court reviewed that document as well.

22 Are there any other documents for the Court to  
23 consider, Mr. McGrath?

24 MR. MCGRATH: No, Your Honor.

25 THE COURT: Ms. Varner?

1 MS. VARNER: No, Your Honor.

2 THE COURT: All right. Ms. Varner, have you and Mr.  
3 Cushingberry read and discussed the presentence report?

4 MS. VARNER: We have, Your Honor.

5 THE COURT: Is it accurate?

6 MS. VARNER: It is.

7 THE COURT: Are there any objections?

8 MS. VARNER: None.

9 THE COURT: Are there any for the Government?

10 MR. McGRATH: No objections, Judge.

11 THE COURT: I should note, and I believe staff  
12 notified counsel this morning, referenced in the presentence  
13 report is an incident from Clark County, and the Court reviewed  
14 the probable cause affidavits, as well as photos and a video  
15 from that incident. And counsel were so advised; is that  
16 correct, Mr. McGrath?

17 MR. McGRATH: That's correct, Judge.

18 THE COURT: And Ms. Varner?

19 MS. VARNER: Yes, Your Honor.

20 THE COURT: Thank you.

21 So there are no objections to the PSR, and I want to  
22 direct everyone's attention to the conditions of supervision  
23 contained in the PSR. They are found at Paragraphs 63 and 64.  
24 These will be the rules of supervision that would govern Mr.  
25 Cushingberry if he is placed on supervised release.

1 Ms. Varner, have you and Mr. Cushingberry carefully  
2 reviewed these conditions?

3 MS. VARNER: We have, Your Honor.

4 THE COURT: Do you have any objections to them?

5 MS. VARNER: We do not.

6 THE COURT: Are there any objections for the  
7 Government, Mr. McGrath?

8 MR. MCGRATH: No, Your Honor.

9 THE COURT: All right. Mr. Cushingberry, do you agree  
10 that you have reviewed these proposed conditions?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. And the probation officer has  
13 included the reasons why he is recommending these conditions.  
14 I agree with him, that these conditions are appropriate for you  
15 and that his reasoning is sound. Do you believe you understand  
16 them?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You have the right to have me read each of  
19 them to you as I pronounce sentence, or if you believe you  
20 understand them and why they are being imposed, you can waive  
21 that right. Do you wish for me to read the conditions when I  
22 pronounce sentence?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: I will accept your waiver of the formal  
25 reading and will also tell you, Mr. Cushingberry, these

1 conditions will be included in writing in the judgment that  
2 will be issued by the Court. So you will always have a written  
3 copy of them, all right?

4 THE DEFENDANT: Okay.

5 THE COURT: The Court will also accept the presentence  
6 report as its findings of fact, accepting the report for the  
7 record under seal. In the event of any appeal, counsel will  
8 have access to the sealed report but not to the recommendation  
9 portion, which shall remain confidential.

10 Within the presentence report, if we all, then, could  
11 turn to the guideline calculation. It begins on page 6 at  
12 Paragraph 16. For the charge of murder in the second degree  
13 and protection of an employee of the United States, the base  
14 offense level is 38.

15 In Paragraph 18 there is a six level victim-related  
16 adjustment, given the employment of the victim as a United  
17 States postal letter carrier. So the adjusted offense level is  
18 44. The Defendant has clearly demonstrated acceptance of  
19 responsibility by pleading guilty, so the offense level is  
20 decreased by two levels. And upon motion of the Government,  
21 because the Defendant pled guilty in a timely way, a third  
22 level would be reduced.

23 Is the Government making that motion?

24 MR. McGRATH: Yes, Judge.

25 THE COURT: All right. So that third level will be

1 taken off, which will result in a total offense level of 41.

2                   The second half of the guideline calculation is based  
3 on Mr. Cushingberry's criminal history; he has none. His total  
4 criminal history score is 0. That places him in criminal  
5 history category I. So at a level 41-I, the guideline range is  
6 as follows: A term of imprisonment of 324 to 405 months,  
7 supervised release of two to five years, a fine of 50,000 to  
8 \$250,000, and a special assessment of \$100.

9                   Counsel, do you agree that is the correct calculation,  
10 Mr. McGrath?

11                   MR. McGRATH: Yes, Your Honor.

12                   THE COURT: And Ms. Varner?

13                   MS. VARNER: Yes, Your Honor.

14                   THE COURT: All right. The Court will adopt that,  
15 then, as its guideline calculation.

16                   My understanding, Mr. McGrath, is that there is a  
17 witness who wishes to be heard from the Government's side?

18                   MR. McGRATH: That's correct, Judge.

19                   THE COURT: I always find it — I think it is more  
20 appropriate if the Defendant's opportunity for allocution  
21 follows that, so consideration of that statement can be  
22 included.

23                   MR. McGRATH: I understand, Your Honor.

24                   THE COURT: All right, thank you. So --

25                   MR. McGRATH: Your Honor, I have just been informed

1 that there has been a change.

2 THE COURT: Okay.

3 MR. McGRATH: We were going to call [REDACTED]  
4 to the stand, and she was essentially going to read her victim  
5 impact statement. I have been asked to read that into the  
6 record, and I would beg the Court's indulgence for that at this  
7 time.

8 THE COURT: Go ahead.

9 MR. McGRATH: Thank you. This is the letter from  
10 [REDACTED] filed at Docket 89-2, and this is Miss Davis in  
11 the purple shirt next to Miss Lloyd.

12 THE COURT: Thank you.

13 MR. McGRATH: I have been unsure how to express  
14 myself, but I think Angie would appreciate cutting straight to  
15 the main point. I watched our daughter, KD, utterly implode  
16 when my brother called me and asked if the coroner had gotten  
17 ahold of me yet. A girl of dreams and open possibilities and  
18 deep compassion who had been overcoming a life of medical  
19 issues, a teen who was looking at becoming a mental health  
20 professional or maybe a mathematician or some career related to  
21 law, a smart mouthed and vexingly honest child was lost in that  
22 moment. Our baby, who we nursed through three major spinal  
23 surgeries who was supposed to die by age nine due to her  
24 condition but survived beyond the experienced neurosurgeon's  
25 most brazen hopes, our miracle child in so many ways, was

1 gunned down as thoughtlessly as Angie was.

2 I held her through her screams of sorrow and fear as  
3 we both sobbed for hours and all the days afterward when the  
4 realizations hit and the blessedly protective numbness faded  
5 into raw realities and every time she didn't get the expected  
6 texts or calls. I watched her withdraw into an icy darkness,  
7 not wanting to interact with one more person and perform her  
8 sorrow in ways they expected her to. She wanted to grieve in  
9 private --

10 THE COURT: Go ahead.

11 MR. MCGRATH: -- but the circumstances did not allow  
12 that. We had three services for her to accommodate all the  
13 people who wanted to pay their respects. Two were mostly for  
14 show with empty rented coffins because we'd buried Ang during  
15 the first one held for friends and family. KD sat at them all  
16 and thanked people for coming and smiled, nodding as they  
17 poured forth their condolences and prayers and recounted their  
18 happiest memories of Angela.

19 In the times between the work of memorialization and  
20 beginning the awful logistics of packing away the detritus of a  
21 dead parent's life, recounting having just been there in that  
22 space with Angela and cleaning the dishes she left in the sink  
23 from the morning she was killed, KD read news articles that  
24 popped up across the country and outside it in newspapers and  
25 social media.

1           Most articles were benign or sympathetic, but she also  
2 read the comments, some blaming Angie, some blaming race, and  
3 some blaming the dogs that caused her to have to stop  
4 delivering the mail in the first place. On top of the surreal  
5 situation, doing the hard work of packing away things and  
6 emotions, being preternaturally strong in the face of it all  
7 and navigating the emerging COVID threat, KD was being  
8 traumatized over and over by mischaracterizations of Angela and  
9 all the absolute worst that disconnected people can say in the  
10 face of a tragedy.

11           She shut down after the memorial motorcycle ride. Her  
12 easy laughter and smile were gone. She didn't reach out to  
13 even her closest friends. For a whole year she occupied the  
14 sofa, sometimes watching TV, sometimes reading, only  
15 occasionally eating, and Skyrim, the video game she had begun  
16 playing at Angela's made decreasing appearances.

17           She stopped going to therapy and didn't stick with  
18 schoolwork when virtual learning came on the next year. The  
19 next year she took a couple months off for mental health days.  
20 This year she caught COVID and had what I hope is her final  
21 surgery to realign her partially paralyzed leg. There was no  
22 cushion for the unfortunate disruptions, and we were told in  
23 November that she would have to withdraw from school and get  
24 her equivalency diploma.

25           In December we signed a paper, and KD is no longer a

1 student and far short of her goals. I am just glad she is  
2 still here, but she feels the seeming finality of an education  
3 ripped away as well.

4                   Angela was gone, but KD became the ghost, and much of  
5 the time she still is. So many people have been trying to  
6 help, and she has a great network of people on her side  
7 encouraging and supporting her. That helps. She has a  
8 therapist she sees regularly again, but leaving the house for  
9 anything other than school still requires cajoling and promises  
10 of fast food.

11                  Her interests in most things she once enjoyed is gone.  
12 KD exists. At 17, now, she has shown no interest in learning  
13 to drive or meet up with friends outside of school. There is  
14 one exception. She did discover Korean dramas and has been  
15 teaching herself the language, culture, and history with the  
16 goal of traveling there after school. It is not what I  
17 expected, but having spent years in the dark void, any light is  
18 welcome. And her innate compassion is still evident. Even  
19 after losing so much, she still doesn't even want to ask for a  
20 life sentence for Angie's murderer. She doesn't feel it is her  
21 place to ask for punishment.

22                  Her own future, being so hard won against the odds  
23 from her spinal cord tumor and its grievous physical fallout,  
24 as well as growing up in poverty was something she was looking  
25 toward with hope, but that was stolen from her by the one

1 stupid decision made in a milieu of generational trauma,  
2 systemic oppression, ignorance, lack of opportunity, poor  
3 impulse control, and absent hope for a better future. I have  
4 empathy for Tony Cushingberry. I heard his life was not the  
5 best, but that doesn't justify, excuse, or explain his  
6 conscious decision to threaten, intimidate, and attack Angie.  
7 His brain still hasn't finished developing, but he knew better  
8 than that.

9 He let himself succumb to the basest of his impulses,  
10 and in the seconds of that encounter, he took many lives beyond  
11 Angie's, including his own future and that of his now  
12 three-year-old son. Does he get that? Can he genuinely  
13 recognize the lasting and expanding traumas he inflicted? The  
14 plea deal was crafted to remove the mandatory minimum. It's a  
15 calculated tactic to possibly evade a harsher sentence, and  
16 that reflects a selfish desire for self-preservation and harm  
17 reduction, not the existence of remorse or even scarce evidence  
18 of a conscience.

19 I still don't know what I think would be fair for  
20 sentencing, whether it is punitive for the guilty or protective  
21 of the public in nature, what the right course would be. I  
22 don't know Mr. Cushingberry to gauge his character, his mental  
23 and emotional state, and I cannot look into his future to see  
24 how he would make use of his time in incarceration. He should  
25 be grateful, though, that it is not up to me to decide his

1 fate, because I have years of sorrow and rage pent up for what  
2 he took, but no punishment can restore what we have lost.

3 Thank you.

4 THE COURT: So Mr. Cushingberry, you have the  
5 opportunity to make a statement. It is called an allocution,  
6 and this is your opportunity. And now would be the appropriate  
7 time to speak on your behalf. It is no disrespect, but because  
8 of the microphone, you can remain seated, okay?

9 THE DEFENDANT: Okay.

10 THE COURT: Go ahead, please.

11 THE DEFENDANT: Your Honor, I appreciate the Court's  
12 time and opportunity given to me to speak. I would --

13 THE COURT: Let me just say one thing. I know you are  
14 nervous and you are reading, but you need to slow down. When  
15 we read, we speak very quickly. So I am going to ask you to  
16 please make sure you slow down so that everything you say can  
17 be both taken down by the Court Reporter and heard by everybody  
18 who is here. All right?

19 THE DEFENDANT: Okay.

20 THE COURT: Thank you.

21 THE DEFENDANT: Your Honor, I appreciate the Court's  
22 time and opportunity given to me to speak. I would like to  
23 start by apologizing, but I know that an apology wouldn't be  
24 enough to heal the hearts that I have broken or even explain  
25 the deepest sorrow I have. I am truly sorry.

1           I want to apologize to Angela Summers and her family  
2 for this nightmare we all have to live and go through with for  
3 the rest of our lives. My heart and prayers go out to  
4 Ms. Summers' daughter. I can't imagine the pain and tears my  
5 actions has brought you. I know it probably won't help or make  
6 things better, but I literally go through a lot physically,  
7 mentally, and emotionally when I think about you. I cry, I  
8 stress, and on top of that, there will be days I won't even  
9 eat.

10          The pain really eats me up on the inside. Losing a  
11 parent, especially a mother, has to be the worst challenge to  
12 overcome in life. My father missed the first 15 years of my  
13 life because he committed a crime and was sentenced to prison.  
14 His absence plays a big role in my life, but it bring me and my  
15 mother closer. I know it's no comparison because my father is  
16 still here, but I struggle today knowing that I took any  
17 chances away from you having a relationship with your mother.

18          Reading your letter affected me a lot. I'm very sorry  
19 to hear about your problems at home and at school. I am sorry  
20 that you feel pain when you hear my name, and I hope after  
21 today that your life gets easier.

22          I wish I could go back and change everything, but I  
23 can't. All I can do is move forward and try to better myself,  
24 which I am already on a good path of doing so. And I hope you  
25 can do the same as well. I wish I had the words to explain the

1 deep -- I wish I had the words to explain the remorse I really  
2 feel for you and your family, but as a man with regrets, the  
3 best thing to do would be apologizing. My heart and prayers go  
4 out to you. I pray for you every night. I am truly sorry to  
5 your family and to the people I hurt and let down. I hope you  
6 can find in your hearts to forgive and accept my apology.

7           I also want to apologize to the postal workers. I  
8 want to say how sorry I am to you. I'm so sorry for taking  
9 Ms. Summers from you guys' community, and I'm especially sorry  
10 to those of you who knew her personally. Any postal worker  
11 should feel safe when they go to work, and I'm sorry my actions  
12 made you and your families afraid.

13           And I want to apologize to everyone for running. I  
14 should have stayed. I know that made it harder for you, and  
15 I'm sorry.

16           Before this tragedy happened, I never been in trouble  
17 a day in my life until I found myself locked up in segregation  
18 in Marion County Jail. My cell was the size of a small closet.  
19 I could stick my arms out to the side and touch wall to wall.  
20 Not only my cell, but the whole environment was dirty. There  
21 was literally human feces on the walls and bars. I was locked  
22 in my cell 23 hours a day, sometimes 24 hours. I was isolated  
23 and cut off from everyone.

24           It was literally the worst time of my life but not  
25 because of these reasons. It was the worst time in my life

1 because I couldn't think about anything except what I had done  
2 to Ms. Summers, to her daughter, and to Ms. Summers' family and  
3 to my family.

4           I thought about it so much I would wake up in cold  
5 sweats from nightmares I would have when I would see  
6 Ms. Summers in my dreams. I had to accept and surrender to  
7 everything I was going through. I felt like this was my  
8 punishment for what I had done. When I had first arrived in  
9 segregation at Marion County Jail I was walking down the range  
10 when a man stuck his arm out through the bars and handed me a  
11 Bible. I never seen or met the man before, but I knew it was a  
12 sign from God.

13           I took it into my cell and began to read it. Not only  
14 did I start turning to it, I started to turn to God. Reading  
15 the Bible gave me hope again. It made me believe things would  
16 get better, and I have held on to that hope. I believe  
17 everything happens for a reason, but I don't know why this  
18 happened to both of our families.

19           But what this has given me is time to think. I know  
20 this is a beginning of a long journey for me. It has been the  
21 first time I actually been able to really think about my past,  
22 and it helped me realize how rough I grew up and many obstacles  
23 I overcame. My entire life revolved around hope. Me, my  
24 mother, and little siblings struggled and lived rough my whole  
25 life.

1           We lived hoping that things would get better. Through  
2 all the trials and tribulations we faced growing up, I still  
3 tried to step up and be the man of the house and a big brother  
4 to my little siblings. I was the glue to my family since I can  
5 remember. I was always there for them when they needed me. I  
6 really tried to be a helper to my family, to my mom, to my  
7 siblings, and friends. With that being said, Your Honor, my  
8 biggest fear today is being seen as this one day.

9           But no matter what happens here today, I am going to  
10 continue living with hope, and I'm going to do that by doing  
11 things that would help better me and my son's future. I have  
12 already started while being in Clark County Jail by taking  
13 classes and programs such as mindfulness program, the WIN  
14 program, and parenting class. Even though this is the  
15 beginning, I know this is not the end of my journey. I want to  
16 help kids in the community that grew up similar to what I did  
17 and that is also afraid to talk to anyone about it. I want to  
18 be a mentor and counsel the kids in the community into making  
19 better choices in life.

20           When I get to prison, I want to take trades and  
21 classes that would help me succeed in my future goals I have  
22 planned. With this being said, I believe I should try to get  
23 my bachelor's degree. I really want to continue learning about  
24 myself so I can work towards a better future. I am willing to  
25 take classes or programs for healthy thinking or counseling if

1 it's available.

2 I plan on taking parenting classes because I want to  
3 be the best father I can be for my son. I also want to try to  
4 take a trade, an electrician, or maybe getting my CDL license.  
5 I am not going to let this experience turn me into the person  
6 everyone thinks I am. I am determined to make me and my family  
7 proud.

8 Your Honor, I want to end this letter with apologizing  
9 to the love of my life, Nikayla. I am sorry for leaving you to  
10 fend for yourself and our son. I know this is -- I know this  
11 is not what we had planned in our future, but I am still going  
12 to do my best to keep the promise I made you. And that was to  
13 support and be there as much as I can for you and our son no  
14 matter what. You two mean the world to me, and I love you-all  
15 so much.

16 To my one and only son, [REDACTED], I'm sorry for  
17 putting our lives on pause. Since the day you were born my  
18 intentions was to never leave your side. My main motive and  
19 focus was to give you a better life and future than I had  
20 growing up. I wanted to be the father to you that I never had  
21 growing up, but I am never going to give up on that no matter  
22 what happens here today. I am still going to be the best  
23 father as I can be and try to have as much impact and influence  
24 on your life as I can. I want you to know I always have and  
25 always will love you and wanted the best for you and your

1 mother.

2           And again, to the Summers' family, to Ms. Summers'  
3 daughter, and the postal workers, I am really sorry. And I am  
4 living with this and taking full responsibility for it every  
5 day. I hope you can forgive me and accept my apology. Thank  
6 you.

7           THE COURT: Thank you, Mr. Cushingberry.

8           Ms. Varner.

9           MS. VARNER: I would like to start today by offering  
10 my sincere condolences to Angela Summers and to her colleagues  
11 at the post office. I want you to know that nothing I say here  
12 today is meant to diminish your loss in any way or take away  
13 from your grief. From the submissions in this case, it is  
14 clear to me that Angela Summers was loved and that she will  
15 continue to be missed. What I am trying to do today is to give  
16 the Court and the people in this room the fullest possible  
17 picture of who Mr. Cushingberry is, where he came from, and how  
18 we got here.

19           Almost exactly a year ago today my dad died. I went  
20 on a trip to Ohio with my kids to celebrate the end of the  
21 school year, and we visited Kings Island for the day. And I  
22 got -- my phone rang. I couldn't hear. It was my mom. I  
23 couldn't hear anything that she was saying, and as I searched  
24 for a quieter place to take the call I got a call from my  
25 sister. And my sister told me my dad had fallen, that he had

1 been taken to the hospital, but that he hadn't made it. I sat  
2 down on the ground in total shock as my little girls surrounded  
3 me, and losing my dad has been one of the hardest things I have  
4 ever had to face in my life because my dad was my rock. My  
5 parents divorced in the early 1980s when my dad got tired of  
6 coming home from work and finding me locked out of the house  
7 and decided that my mom's addiction was not going to stop.

8 So it was just me and my dad for a while, and as he  
9 told me, we are a team. And even after my dad got remarried,  
10 we were a team. Even as an adult, we were a team. When Tony  
11 was 19 months old, his father, Anton, went to prison, and Tony  
12 stayed with a traumatized and drug-addicted mother in his life,  
13 Acacia. That didn't make his bond with his mom any less real  
14 than the bond that I had with my dad. Acacia was all that Tony  
15 had, and Acacia loved Tony. She still loves Tony.

16 I have spent many hours with Acacia and watched her  
17 cry over her son, and when Anton left the picture,  
18 dysfunctional and toxic as it was, Acacia and Tony were also a  
19 team. I think it is really important for us today, as we are,  
20 like, sifting back through Tony's history and we are looking  
21 for guideposts in his life as to how we ended up here today for  
22 us to take a minute to realize that Acacia didn't start the  
23 dysfunction in this family. Like so many of the stories that  
24 are told in this courthouse, this is a story that involves deep  
25 poverty, drug abuse, domestic violence, teen pregnancies, and

1 childhood neglect and abuse.

2                   Acacia's mom, Amy, lived in a house where she doesn't  
3 have any memories of her father ever being sober. Some of her  
4 most vivid memories of her father are of his father laying out  
5 drunk in the yard after drinking too much, and that was normal.  
6 Amy also lived in a house with a mother that was verbally and  
7 physically abusive. She was choked, punched, and most  
8 devastatingly, Amy, she felt like she received no love from her  
9 mother.

10                  She was pregnant with Acacia by the time she was 14,  
11 and she was desperate to leave her toxic house. Amy herself,  
12 then, became an alcoholic, and Tony's mom, Acacia, also grew up  
13 surrounded by drug abuse and domestic violence. Among the many  
14 violent acts that she witnessed when Acacia was seven, she  
15 watched as her boyfriend -- her mother's boyfriend tried to run  
16 her mother over with a truck as she screamed and cried from the  
17 porch.

18                  When Amy finally got the strength to leave her abusive  
19 partner for a period of time and they went back to live with  
20 Amy's parents for a while, Acacia remembers watching her  
21 grandmother slam her mother against a wall and choke her.

22                  Repeating a cycle, traumatized Acacia was also  
23 pregnant at 15 and desperate to leave her mother's toxic house.  
24 When Tony was born, Acacia wanted to protect him from the  
25 things that she had suffered. She wanted better for him, but

1       she lacked the tools. Trying to scrape by at that young age  
2 and with Tony in tow, she was arrested for shoplifting, and  
3 that was just going to be her first contact with child  
4 services.

5           During Tony's childhood, there would be at least 24  
6 cases opened with child services. With not even a high school  
7 education and making minimum wage, of course, Acacia started to  
8 bounce around from house to house as she couldn't afford the  
9 rent. Acacia had at least 25 evictions during Tony's  
10 childhood, and they had at least 30 addresses that we could  
11 count.

12           And most times the houses or the apartments that they  
13 were able to rent were just abysmal. They had no electricity,  
14 sometimes no gas, sometimes no working utilities at all. There  
15 were times when they had to use space heaters in the winter to  
16 stay warm. There was often no food in the fridge, and as  
17 Acacia bounced around between houses, of course, Tony was  
18 bouncing around between schools. He attended ten schools in  
19 eight years. He often missed school, he was often tardy.

20           By the time Tony was seven, Acacia was pregnant again,  
21 and she was, then, living her own life of domestic violence.  
22 Tony routinely witnessed his mom getting beat up by a 6 foot 2,  
23 240-pound Darryl Taylor. He saw his mom kicked, punched,  
24 thrown to the ground. He saw his mom beaten when she was  
25 pregnant. He couldn't -- Tony was tiny. He couldn't do

1 anything to help her, but he did try. Tony used to sit out on  
2 the front stoop and keep watch for Darryl and try to warn his  
3 mother that he was coming home. When the fighting -- he would  
4 also try to help her barricade the door against Darryl when  
5 Darryl was angry, but Tony was small. When the fighting really  
6 started, the only thing Tony could do was hide.

7 Darryl was arrested eight times during their  
8 relationship for domestic battery, battery with injury,  
9 burglary, theft, intimidation, but Acacia was scared of him and  
10 rightly so. And Acacia never pressed charges.

11 Adding to what was already a home that was filled with  
12 chaos, between the ages of seven and nine, Tony added a new  
13 sibling every single year. Every one of the siblings was  
14 positive for drugs, and as the DCS cases opened and closed  
15 around those births, Tony was interviewed, and Tony did what  
16 his mother told him to do and he stayed silent. What happens  
17 in this house stays in this house, his mother told him.

18 And as those new babies were coming, Acacia had to  
19 work, and Acacia often worked nights. And Tony was left to  
20 care for those babies. Acacia would leave bottles and diapers  
21 on a nightstand for him, and then, Tony would take care of a  
22 two year old, a one year old, and an infant. I am a mother,  
23 and I know Your Honor is a mother and I simply cannot imagine  
24 that.

25 I have nine-year-old twins right now. One of my twins

1 is a little more responsible. I can't imagine giving her one  
2 baby to care for, let alone having three babies overnight. To  
3 put it all in the hands of a little kid like that is  
4 terrifying, but Tony was happy to help his mom. It is no  
5 surprise that in the pictures that DCS took over the years,  
6 Tony is often holding one of these little baby siblings and  
7 beaming with pride. He loved his siblings.

8 Acacia's relationship with Darryl ended when he was  
9 sent to prison for 12 years for robbery. Less than a year  
10 later, 27-year-old Acacia began a relationship with 18-year-old  
11 Paris Duncan, who was dating Acacia's teenage sister at the  
12 time. Paris was also horribly violent, and Paris and Acacia  
13 fought night and day. Like Darryl, Paris was arrested 14 times  
14 during their relationship, and most of those arrests were for  
15 battery.

16 Again, Tony saw his mom routinely beaten. He saw  
17 Paris break and throw things around their home, and when Tony  
18 was 11, Paris and Acacia exposed him to a shooting. Paris had  
19 broke into a neighbor's house, and the neighbor came to  
20 confront Paris with a shotgun. Paris and Acacia threw Tony in  
21 the backseat where he was huddled in the backseat of the car  
22 and took off as bullets were flying.

23 That incident finally ended when the police surrounded  
24 their car and pulled everyone out at gunpoint, and 11-year-old  
25 skinny little Tony was pulled out of the car shaking with guns

1 pointed at him. There were times that the fighting was so bad  
2 that Tony had to call the police. During one fight Tony was  
3 bitten by Paris, that he tried to keep Paris from attacking his  
4 mom.

5 Tony was handcuffed for the first time when the police  
6 arrived to arrest Paris, and Paris barricaded himself in the  
7 house, trapped the kids up in the bedroom, and was trying to  
8 evade the police. When the police broke down the door Tony was  
9 handcuffed and put on the floor, and before Paris surrendered  
10 himself, he held up their youngest child, Paris' own child,  
11 Tony's youngest sibling, his three-year-old child as a shield.  
12 On top of trying to save Acacia from Paris, Tony was also  
13 trying to protect his siblings. He was also trying to save and  
14 protect Acacia from herself.

15 Acacia -- by the time Acacia was with Paris, Acacia  
16 was a full-blown alcoholic herself. She was buying vodka by  
17 the gallon. When Tony was 12 she was pregnant again, and she  
18 was still drinking heavily. And Tony tried to stop Acacia one  
19 night. He was worried about her, and most tellingly, he was  
20 worried about his unborn baby sibling.

21 In response, Acacia shoved him through a glass window  
22 on their front porch, cutting the skin and muscle on his arm.  
23 That baby, Tony's fourth sibling, was also born drug positive.

24 Another night he tried to stop his mother from  
25 fighting with a woman on the street. She had gotten into an

1 altercation with a neighbor. He was worried because he knew  
2 that these fights in the neighborhood could easily become  
3 fatal. So he went outside, and a 15-year-old Tony flung his  
4 mother over his shoulder and carried her, drunk and  
5 belligerent, into the house, only to have her go right back  
6 outside and keep fighting. That night Acacia was arrested, and  
7 Tony did what Tony has always done. He took care of the kids.

8 When Tony was 17, Acacia had her fifth drug positive baby,  
9 and by this point Tony had long been the functioning adult in  
10 this household. For years at this point he had cooked  
11 breakfast, he had cooked dinners, he had done laundry, cleaned,  
12 given baths, helped with homework. He did hair. He packed  
13 snacks. He got them off to school and daycare.

14 The siblings described Tony as having been a mother and  
15 father to them. Over the years there were some moments of  
16 reprieve for Tony. Tony was able to meet his father's family,  
17 and they welcomed him with open arms. Tony was sometimes  
18 allowed to spend time at their house, and even though they  
19 lived in Section 8 housing, Tony thought they were rich because  
20 they had bedrooms to themselves. They had food in their  
21 refrigerator, and their mom took them to do fun activities  
22 sometimes.

23 And when he was 15, Tony was able to meet his biological  
24 father when he was released from prison, and he was thrilled to  
25 have Anton back in his life. But he stayed characteristically

1 silent about the things that were going on at his house. There  
2 were short periods of time when he lived with his grandmother,  
3 his maternal grandmother, and these breaks did allow Tony to  
4 focus on school and to just take a break from what was going on  
5 in his house.

6 School and basketball were also a reprieve for him. From  
7 an early age, from first grade, Tony would sometimes wake up  
8 before his mom in the morning and get himself out of bed and  
9 get himself ready for school. He did get dressed, brushed his  
10 hair, brushed his teeth, get his breakfast, and be ready to go  
11 because Tony loved school.

12 School represented a place of normalcy for him and a place  
13 where he didn't have to be afraid, and on the basketball court  
14 was a place where Tony truly excelled. He was a natural. He  
15 was very talented. He used to play in a neighborhood center  
16 where he played three-on-three basketball. He was so good he  
17 was invited to go to national tournaments.

18 He played on teams that the schools that he attended, and  
19 as a high schooler at Crispus Attucks, he was being scouted for  
20 college ball. Tony's teachers and coaches loved him. He left  
21 a lasting impression on both them and the other students he  
22 went to school with. He was a laid back and funny kid with an  
23 easy smile, and he was known to be a peacemaker.

24 Tony didn't like when people were picked on, whether you  
25 were a student or a teacher, and Tony used his status on the

1 basketball team to help keep the other kids in check. He  
2 stepped in when he saw teachers or students being picked on.  
3 Unfortunately for Tony, he blew out his knee in his sophomore  
4 year. He was able to play in his junior year, but by his  
5 senior year he was told that is it. You have got to stop, or  
6 you are going to face permanent injury.

7 In the grand scheme of things, those reprieves for Tony  
8 were just not enough. Tony was resilient, but in the face of  
9 so much chaos, like resilience, you can only get a child so  
10 far. Ultimately, the driving force in his life was the toxic  
11 relationship with his mother. Tony could not stay away because  
12 Acacia wouldn't let him. Acacia wanted him home, and Tony  
13 could not withstand that kind of pressure.

14 During his senior year, his basketball dreams had been  
15 crushed. Tony started arriving late to school and missing  
16 school, leaving early, because Acacia wanted him for childcare.  
17 But Tony did it for her. They were a team, after all, and at  
18 18, Tony became the first one in his family to graduate from  
19 high school. As Tony was graduating, Acacia found a new way  
20 that she wanted him to protect her. She wanted him to get a  
21 gun, and Tony did.

22 After high school, when the basketball dreams were gone and  
23 he didn't have school to focus on, Tony struggled. All of the  
24 positive and wonderful influences that he came in touch with  
25 through school, his coaches and his teachers and his friends

1       were gone. But at 19, Tony found out that he was expecting a  
2       child. Tony's long-term girlfriend, Nakayla Lee, was pregnant  
3       with their first baby, and Tony really found for himself a new  
4       purpose in fatherhood.

5           He went to every doctor's appointment. He catered her  
6       through her pregnancy. He never left her side during labor,  
7       and having parented already, Tony was prepared for the  
8       challenges of a newborn, and he helped teach Nakayla how to  
9       care for their baby. And when they had to make a decision  
10      between who was going to go back to work and how they were  
11      going to manage childcare for the baby. Tony, at that young  
12      age, became a stay-at-home parent, and it was a role that he  
13      loved and took to immediately.

14           He and [REDACTED] were glued together. That is what people  
15      told me. They were glued together. You always saw them  
16      together. The stressors at that point on Tony were continuing  
17      to increase. Tony was already the parent in his mother's  
18      house. He had also promised to help his Aunt Taylor with her  
19      baby. She had a little son, and he would help her by  
20      baby-sitting or helping with bills if he could. And he was  
21      determined to be a father figure for her son.

22           Tony was the go-to person in his family: His grandmother,  
23      his mother, his cousins, his aunts, his uncles. If somebody  
24      had a problem, they were going to go to Tony. They depended on  
25      him, and he was also a new father himself. And he was hoping

1 to move out and start his life with his baby, but in October of  
2 2019 his mother received another eviction notice. And the only  
3 home they could find that they were able to afford was on Denny  
4 Street, which is another dangerous neighborhood in Indianapolis  
5 where hearing gunshots is like a daily occurrence.

6 Tony moved his family in in December, and though Tony  
7 wanted at that point to move out and to be with Nakayla and  
8 have his own home with his family, Acacia guilted him into  
9 staying, telling him, "How can you leave me and your siblings  
10 alone here?" Tony relented.

11 Three months later in March, the COVID-19 global pandemic  
12 began, and that really was a unique time in history. Families  
13 were stressed. Families were facing disruptions in their kids'  
14 education. I myself had four kids at home all of a sudden for  
15 the foreseeable future. Families faced disruptions in their  
16 childcare for the same reasons.

17 Kids weren't eating at school. Families' budgets were  
18 stretched. Job losses, being told you needed to work if you  
19 were essential, fears over getting sick. Many people who have  
20 never suffered from anxiety or depression began to suffer  
21 during that time. The World Health Organization estimates that  
22 there was a 25 percent increase in anxiety and depression, and  
23 it is at this point we are racing towards April 27th, and  
24 tensions were already high.

25 The week prior, Acacia had yelled at and threatened Angela

1 Summers. On the morning of the 27th, Tony's day started with a  
2 phone call from his mom. Her car had broken down. She needed  
3 to go to Auto Zone to get a battery for her car. She needed  
4 Tony to come pick up two of his siblings. Tony went.

5 As soon as he got back home his phone was ringing again.  
6 This time he could hear yelling in the background. Acacia had  
7 gotten into a fight with her sister and had been thrown out of  
8 the car that they were in. He needed -- she needed Tony to  
9 come and get her. Tony went.

10 After he got Acacia calmed down and got her back in the  
11 car, they went to Acacia's mom's house to see if Acacia's  
12 sister had gone there with the battery. She hadn't, but in  
13 that short period of time Acacia got into a fight with her  
14 mother, and after he got Acacia back in the car again, Acacia  
15 wanted to go over to her cousin Tiffany's. Tony took her.

16 Acacia and Tiffany decided that they wanted to have a drink  
17 together. First, they needed Tony to drive them across town to  
18 pick up tools to fix the car. Tony took them. On the way  
19 home, they wanted Tony to take them to the liquor store. Tony  
20 took them.

21 After Tony got the group dropped off on Denny Street, Tony  
22 started trying to sort out the missing battery. He texted his  
23 aunt, asking, "Can I come over? If I don't bring Acacia, if I  
24 don't bring mom with me, can I come over and get the battery?"  
25 She agreed. So Tony went to get the battery.

1       By now, it is approaching evening, and Tony, in a twist of  
2 fate, arrived home just as Angela Summers was delivering the  
3 mail on the street. His mother was angry. She wanted the  
4 mail; and Tony, as he had been doing all day, as he has been  
5 doing for his entire life, stepped in to help, and tragedy  
6 unfolded.

7       In that moment, when Tony pulled his gun and he shot  
8 Miss Summers, the entire constellation of Tony's past converged  
9 in that moment: The complex trauma, the posttraumatic stress  
10 disorder that he suffers as a result of the constant violence  
11 and shootings that he had seen had left him in a heightened  
12 alert and hypervigilant state.

13       In other words, Tony was one step away from fight or flight  
14 at any moment, and that is because trauma lives in our bodies.  
15 Traumatic life experiences, like the ones that Tony had  
16 routinely, leave a physical imprint on us. And when that  
17 happens, our stress responses can look very different, like,  
18 our responses -- the responses that you and I might have to a  
19 stressful event might look very different than the response  
20 that Tony might have.

21       And in that heightened state, when Tony was pepper-sprayed,  
22 he was primed at that point to misperceive the threat to  
23 himself. His underdeveloped 21-year-old brain at the time, his  
24 cognitive impairments in the areas of the brain that help us  
25 make rapid decisions and that help us to control our own

1       impulses just left him with a lack of ability to understand and  
2 reason through what was happening to him and make an  
3 appropriate response.

4       Every parent fears the moment when their child's split  
5 decision -- moment when their child's decision that is made in  
6 a split second alters the course of their lives, and that  
7 happened on April 27th everywhere. With his whole life ahead  
8 in one brief moment, Tony, by taking a life, altered the course  
9 of many lives.

10      It occurred to me in thinking about this case how deeply  
11 affected Tony and I were by our parental teams; me and my dad  
12 and he and his mom. I wasn't exposed to chronic violence and  
13 poverty. I haven't witnessed people be shot in front of me. I  
14 have never lost anyone in my life due to violence. I wasn't  
15 forced into the role of parent or protector in my home. In  
16 many, many ways, I was able to succeed because of the moral  
17 compass of my father.

18      My entire life, every decision that lay before me, the  
19 right decision was the easy decision. And for Tony, that was  
20 the total opposite for him. He grew up in a system that  
21 modeled violence and drug abuse, and every day the right  
22 decision for him was the harder one. And up until April 27th  
23 of 2020, he was succeeding not because of but in spite of the  
24 moral compass of his mother. Tony was breaking the  
25 generational cycle all by himself, and I just want to take a

1 moment and consider how truly remarkable that is. Tony was  
2 raised in an environment that made him hypervigilant, but he  
3 was also known in his community as a peacemaker.

4 I just think it is remarkable that he overcame himself in a  
5 way that many of us -- even with the benefits of time, with  
6 reflection, with therapy, with being able to sort through our  
7 own past, haven't been able to do. Growing up as deeply on  
8 faith as he did, he has still somehow demonstrated resilience  
9 his entire life, that innate ability to just bounce back, to  
10 adapt, to adopt a positive mind-set despite the things that are  
11 happening in our lives. And he has been doing that his whole  
12 life, and he still made a deeply devastating mistake.

13 We all, in our lives, experience successes and failures,  
14 but the lives that we lived made us prone to different  
15 mistakes. I have been free my whole life to make small  
16 mistakes, even bigger mistakes but carefully guided by a loving  
17 parent.

18 For Tony, carrying the trauma that he carries with him, one  
19 mistake had the potential to be catastrophic in his life, and  
20 it was. And it was also painfully public. Tony's biggest  
21 failure happened on the national stage. It was in front of  
22 everyone who mattered: His community, everybody he knows, his  
23 family, Indianapolis, the entire nation. He had to immediately  
24 face a reckoning at that moment. You can't go back. You can't  
25 change it. You can't beat it. You can't undo it. There was

1 nothing left for him, and I think in that moment people made a  
2 lot of assumptions about Tony. And I think that is pretty  
3 normal, but privately, Tony's community was reeling.

4 This did not match in any way the Tony that they knew. The  
5 Tony that they knew was a goofy and smiling kid. He was a  
6 peacemaker. He was the kid who didn't run the streets, who  
7 didn't get in trouble. He had never been in trouble a day in  
8 his life -- not in school, and not in the community.

9 We spend a lot of time telling our clients that who they  
10 are is not defined by their worst act. That has never felt  
11 truer to me than it does in this case. At the end of the day  
12 standing here today, it is difficult to accept that it took  
13 disaster for Tony to recognize the patterns in his family and  
14 especially with his mom.

15 Tony, as you heard him talk about in his statement, for the  
16 first time, has had time to move beyond thinking and planning  
17 for essentials and has had some time to try to make sense of  
18 his own history. He spent a lot of time thinking about what  
19 happened to Miss Summers and her family and what has happened  
20 to him and realizing that he cannot go back to living life the  
21 way that he was before.

22 He can't go back to his mom, to being everyone's protector,  
23 to jumping whenever anyone needed anything, to ignoring his own  
24 needs. That whole life is gone for him. When I first met with  
25 Tony, that was his goal. His goal was I am trying. Whatever

1 happens here, I am trying some day, some how to get back to  
2 being that guy again. Now he has realized that he has to do  
3 something new.

4 That piece, although it is alongside deep sorrow and  
5 tragedy, it is like being unshackled after 23 years. And on  
6 top of doing the work on his past, Tony has been using his  
7 time, as he spoke about, to prepare himself for the hope that  
8 he might be home again one day. He has taken every class he  
9 can. He stayed strongly connected and bonded with his family.

10 He is still providing help and assistance. He is still  
11 talking his siblings through their lives as much as he can. He  
12 is still parenting them, and he stayed very close to Nakayla  
13 and his son [REDACTED] hasn't let this shake his  
14 determination, as you heard him talk about, to be there in his  
15 son's life and to be the father to baby [REDACTED] that he didn't  
16 have in his life.

17 So to me, that is just a sign that that resilience is still  
18 alive inside Tony, and he has a plan for what he wants to do  
19 when he gets to prison. He wants to explore college. Lately  
20 he has been talking about being interested in counseling. When  
21 he was a kid, he didn't feel like he could speak about what was  
22 happening to him, and he is interested in helping other kids  
23 who feel like they don't have a voice.

24 He is interested in doing an apprenticeship through the  
25 Department of Labor to become an electrician. He would like to

1 participate in the BRAVE program, which is a cognitive  
2 behavioral residential program for young males who are serving  
3 their first federal sentence.

4 Now, after considering our submissions and hearing Tony's  
5 story, we would ask this Court to impose a below guideline  
6 sentence of no more than 220 months or 18 years. That number  
7 represents the mean sentence for second-degree murder that is  
8 cited in our memo. It also represents the average reduction  
9 applied to second-degree murders also cited in our memo.

10 THE COURT: Can I ask you a question about that? The  
11 means and averages cited in your memo, do you have any idea  
12 what -- you have cited criminal history category but not the  
13 offense level. Do you, do you know what the offense level was  
14 or whether there was an enhancement such as was applied in this  
15 case?

16 MS. VARNER: Those were not broken down, not  
17 specifically on the sentencing calculator's interactive tool.  
18 You could just look for the main guideline that was applied in  
19 the case and then enter the criminal history category and get  
20 the averages.

21 THE COURT: Okay. Thank you.

22 MS. VARNER: We would suggest to the Court that with  
23 no aggravators in this case other than the official victim  
24 enhancement, which is already accounted for by the guidelines,  
25 it would be well within the Court's discretion to go below that

1 point because this wasn't an aggravated crime.

2 In the case survey that we submitted to the Court, you  
3 know, you could really get a sense of the aggravators going on  
4 in these cases. Tony wasn't planning to kill anyone that day,  
5 not at all. He is not a member of a gang or a terrorist  
6 organization. He wasn't in the midst of committing another  
7 crime or trying to escape one. He didn't engage in some sort  
8 of prolonged and violent attack. He didn't hide a body. He  
9 didn't shoot indiscriminately at police officers.

10 A sentence there also, you know, the guideline doesn't  
11 take into account the mitigators that are present in this case  
12 that aren't accounted for, and I think in this case they are  
13 pretty stunning: Tony's terrible traumatic childhood, his  
14 chronic exposure to poverty and violence, his resulting  
15 posttraumatic stress disorder, his learning disabilities, his  
16 age and underdeveloped brain at the time of the crime, his  
17 community support, and his total lack of criminal history.

18 And it takes into account the facts and circumstances  
19 that this offense, especially as compared to the facts and  
20 circumstances of the other second-degree murders that we cited,  
21 when Tony was maced, his hypervigilance, and long history of  
22 violence led him to misperceive the danger, and he responded.

23 In closing, I would like to say I personally have  
24 spent many, many hours with Tony, and I want everyone in this  
25 room, if you leave with one thing, I want you to leave knowing

1 that Tony is filled with regret, regret that he didn't  
2 understand things in his life sooner, regret that he never  
3 asked for help, regret that he didn't understand how broken he  
4 was, regret that he has left Nakayla to parent alone, and he is  
5 repeating the generational cycle that he desperately wanted to  
6 avoid.

7           His little baby son [REDACTED] is growing up without him,  
8 but more than anything, Tony is steeped in the regret that  
9 someone's life was cut short and that someone is not going home  
10 to their child because of his actions. I am, myself, I am a  
11 firm believer that there is medicine in stories and how they  
12 resonate with us and how we take them into our own lives. And  
13 I know that there has been medicine in Tony's story for Tony,  
14 but beyond that, I hope that there has been some today for  
15 Miss Summers' family, for the postal community, and for Tony's  
16 family. Thank you.

17           THE COURT: Do you want to address at all the Clark  
18 County -- Clark County Jail incident?

19           MS. VARNER: So the Clark County Jail incident, in my  
20 estimation, Your Honor, it does look like something was  
21 happening in that room. I think it was a one-off situation. I  
22 think it is difficult to know, and without more information,  
23 what Tony's role was there. And I want to say that I have -- I  
24 have visited the Clark County Jail, I am not kidding you, at  
25 least 20 times and probably more than that. And every time I

1 am at the Clark County Jail, somebody there says something to  
2 me about Tony that is positive. He, he is kind. He is  
3 respectful. He is no problem for us.

4 I have seen someone, a staff member at the jail offer  
5 Tony a bite of his sandwich. I have seen them joke with Tony.  
6 I have seen them play, like, a little prank on him, and I, I  
7 think that the comments -- I also had someone tell me at the  
8 jail, "Tony is respectful and kind, and I wish everyone here  
9 was like that."

10 I think we have to be careful not to give that  
11 incident too much weight. Dr. Brams, our trauma expert,  
12 posited that Tony is not going to be violent moving forward,  
13 that his specific incident was a, a result of the constellation  
14 of factors in his background. And I think that the comments of  
15 the people at the jail show that. Those comments comport  
16 exactly with Tony's community's comments about the kind of  
17 person that he is.

18 Thank you.

19 THE COURT: Thank you.

20 Mr. McGrath.

21 MR. MCGRATH: Thank you, Judge.

22 THE COURT: Mr. McGrath, just before you get started,  
23 I wanted to confirm my understanding is that there is no  
24 restitution being sought?

25 MR. MCGRATH: That's correct, Judge.

1 THE COURT: Thank you.

2 MR. McGRATH: Yes. Before I begin speaking, I would  
3 like to acknowledge a few people that are in the room that have  
4 been waiting a long time for this day: KD, Angela's daughter  
5 is present; [REDACTED], former spouse, also mother of KD --

6 THE COURT: Right.

7 MR. McGRATH: -- whose letter I spoke of earlier. We  
8 also have Mr. Crowe, who is Angela Summers' uncle here to show  
9 support.

10 THE COURT: Okay. Where is Mr. Crowe? Okay. Thank  
11 you.

12 MR. McGRATH: Several management members of the United  
13 States Postal Service: Post master of Indianapolis, the  
14 district manager for the State of Indiana, and the customer  
15 service operator manager. They are also present in support of  
16 the family and interested in the outcome of the case.

17 There are several postal inspectors here, including  
18 Case Agent De St Jean that have come to show their support; and  
19 from IMPD, Homicide Detective Dustin Keedy, who investigated  
20 this case alongside the postal inspectors.

21 At the outset I would like to thank the Court for  
22 reviewing all of the information that was thrust upon it sort  
23 of at the last minute.

24 THE COURT: That is my job.

25 MR. McGRATH: Thanks to counsel for putting together

1 the time and effort to -- it took to resolve a case like this,  
2 and to present the best that they could for their client today,  
3 and in the writings that they did. This -- ultimately, there  
4 is no real word to give the most scope as to this case other  
5 than tragedy. This is the ultimate tragedy, tragedy of  
6 circumstances, tragedy of the situation, tragedy of issues in  
7 the future, going forward, that may never be repaired.

8         But this crime, I think, can best be described -- and  
9 my argument, I think, can best flow from the 3553(a) factors.  
10 I appreciate you reading the United States' memo, Judge, that  
11 pouring out of the emotive aspects of a case such as this and  
12 weaving in the things about the effects that it has had on the  
13 survivors. But I think that factors themselves give us great  
14 guidance on how we can evaluate what the best sentence is in  
15 this case.

16         In looking at the first factor, nature and  
17 circumstances of the offense and history and characteristics of  
18 the offender. Now, as I stand before you, oftentimes, I kind  
19 of jumble all of that into one because it is there in the first  
20 section. It is not really separated by much other than commas,  
21 but for this case, I think parsing it all out is extremely  
22 important. And I would like to do that at this time.

23         Looking at the nature of the offense, and as I stated  
24 in my memo and here today, as I think everyone would reasonably  
25 agree, murder is the ultimate offense. And it is defined as

1 the unlawful killing of a person with malice aforethought, and  
2 a person acts with malice aforethought if the person takes  
3 someone else's life deliberately and intentionally or willfully  
4 acts with callous disregard for human life, knowing that a  
5 serious risk of death or serious bodily harm would result.

6 Now, looking at the submissions by the Defense  
7 yesterday and reviewing those cases, cases of which had varying  
8 guidelines, unclear offense levels but varying sentences above,  
9 below. All those cases; a lot of them, anyway, seemed  
10 extremely harsh. And while I can concede that Mr. Cushingberry  
11 was not committing another crime as he committed this offense,  
12 that doesn't take away the heinousness of it, and that should  
13 not be specifically recognized as a reason --

14 THE COURT: Can you hold on for one second?

15 MR. McGRATH: Oh, yes, Judge.

16 THE COURT: My computer keeps shutting off, and it is  
17 driving me crazy. We have already had him up here once. I  
18 apologize. Go ahead. Fingers crossed.

19 MR. McGRATH: As I stated, it is the ultimate crime,  
20 and accordingly, the most severely punished, and I think there  
21 are two reasons for that. One, you have a life. I heard Ms.  
22 Varner say there is hope in stories. This is a story that has  
23 been terminated. A story is over. Only the stories of the  
24 past live on, and those only live on as long as memory allows.  
25 So those stories have ended, and there is no next chapter.

1                   So that theft is extremely considered by others when  
2 thinking about how this crime affects our society, but we also  
3 look to the lives of others, others such as [REDACTED], KD, who  
4 so eloquently -- more eloquently than I could ever do -- put  
5 forth in their letters the effect that this loss has had on  
6 their life, the time stolen, the health affected, the hearts  
7 shattered, the dreams thwarted, things of that nature that,  
8 that, that can just never be gotten back, and only time and a  
9 significant amount of healing could possibly make any better.  
10 So these types of damages occurred, and this is what Tony  
11 Cushingberry had wrought with the nature of this offense.

12                  And circumstances of the offense, we would not be  
13 remiss -- be remiss not to discuss this separately. This  
14 occurred in unprecedented circumstances, right when our  
15 pandemic was really taking a grip on the country, and essential  
16 services, such as the ones Miss Summers had to perform, they  
17 had to go on. They had to be done, and Miss Summers was  
18 willing to take the risk to do that, and this was a situation  
19 where having now a better understanding of Mr. Cushingberry,  
20 knowledge of the situation there, are circumstances that I  
21 think maybe in a different time and a different place may not  
22 have happened, but they did happen.

23                  And they didn't happen for any traditional motive that  
24 we might be inclined to look at. There was no profit. There  
25 was no revenge, not even self-preservation. It was simply

1 nothing. It was for nothing, a life vanquished for something  
2 so immeasurably trivial as mail delivery.

3 The witnesses detailed that Mr. Cushingberry pursued  
4 Miss Summers aggressively over the mail delivery, that he was  
5 armed, and when mildly provoked with the dog repellent that I  
6 provided the physical facts for to the Court, he made the  
7 ultimate decision to end the life of another. And I think, and  
8 this is where I do appreciate what was said here today and also  
9 what was put forth in the Defense memo regarding what  
10 Miss Summers had posted on her Facebook account, how she had --  
11 in case the Court had any questions about her decision to use  
12 that dog repellent in that situation, I think now those  
13 questions have been answered.

14 It was an acknowledgment that there was intense stress  
15 working in that block, specifically to that house under which  
16 Miss Summers had been placed. It wasn't highlighted previously  
17 by me because Mr. Cushingberry was not there, and I knew that.  
18 I knew he was not present for when Miss Summers was accosted,  
19 but it gives you a glimpse into the mindset of how Miss Summers  
20 would approach that house.

21 It is highly demonstrative of the abuse and anxiety  
22 created in Angela mere days before her death. It is also  
23 indicative of her dedication and willingness to perform a job  
24 exposing her to significant risk, not only from COVID, but from  
25 the public that she served. And when she was approached by Mr.

1 Cushingberry on that day, she was right to be vigilant because  
2 of the abuse that she had faced, and the actions that she chose  
3 were in defense of herself. And Mr. Cushingberry, in his  
4 hypervigilance, responded with the ultimate decision to end her  
5 life.

6 I think moving on, looking at the history of the  
7 Defendant, there is not much else that I can provide to the  
8 Court that hasn't been provided in the presentence report and  
9 the sentencing materials. They have done a fantastic job of  
10 highlighting who the people closest to Mr. Cushingberry find  
11 him to be, what he had overcome, what he was doing with his  
12 life, and the effect that his mother had on his thought  
13 process.

14 But in my opinion, after contemplating that and  
15 thinking it over for the weekend -- over the past three years,  
16 really, this sort of thing feeds into characteristics that I  
17 think are important for the Court to understand that are  
18 especially dangerous. I have heard him described as a  
19 peacemaker several times today. I read he is a peacemaker who  
20 has never known peace, but if we look at this day, his actions  
21 were hardly peaceful. They were provocative, aggressive, and  
22 with malice.

23 He had been described psychologically playing the role  
24 of protector for his mother who had been slighted, but he is  
25 constantly in this fight-or-flight mode. Well, in this case he

1 chose fight over flight, and not just fight, he chose to  
2 destroy.

3 He was working, as I stated, the role of protector, as  
4 I have heard described, for his mother who had been slighted.  
5 But these were not the actions of a protector. These were the  
6 actions of an avenger, and perhaps years of futility in  
7 watching his mother face abusers whom he could not deter built  
8 in him this aggression and willingness to answer the slightest  
9 of perceived wrongs. And particularly in this case, to a  
10 weaker target, Miss Summers was not 6 foot 2, 240. She was  
11 five, six, 150 pounds, carrying a mail bag and dog repellent.

12 The Defense has made it clear, that this is  
13 essentially an ingrained trait. So what happens next when the  
14 object of his need to protect shifts to someone or someone else  
15 and this feeds into the protection of the public? But I will  
16 discuss that in a moment.

17 The need for the sentence imposed to reflect  
18 seriousness of the offense, promote respect for the law, and to  
19 provide just punishment for the offense. I know Your Honor and  
20 everyone in this room knows the seriousness of the offense. It  
21 doesn't even bear repeating at this point. It is the most  
22 serious of offenses.

23 It is at the highest level, and a punishment  
24 commensurate with that offense, as recommended by the  
25 Government, strikes the appropriate chord as to what is, in

1 fact, a just punishment.

2 Affording adequate deterrence, perhaps not for Mr.  
3 Cushingberry, as I stated in my memo candidly, the deterrence  
4 going forward, I think, with a sentence recommended by the  
5 Government, it would not have the same effect given the age he  
6 would be once released and what I consider to be his sincere  
7 remorse today about the events that occurred and his  
8 contemplation of those events over the past three years.  
9 However, it does afford adequate deterrence to the public. It  
10 shows the public how the Court values human life and how it  
11 values its public servants.

12 If we are talking about protecting the public from  
13 further crimes of the Defendant, I mean, I already talked about  
14 the characteristics and what it took for him inside to do this  
15 act, and Your Honor touched on this moments ago with Defense  
16 counsel as far as the pending case and the viewing of that  
17 video. I don't know what happened in that room.

18 I could tell, essentially, that Mr. Cushingberry  
19 followed three other men that went inside, reemerged at some  
20 point, got a trashcan, went inside back into the room, came  
21 back out with a full trashcan, and then went back inside. And  
22 then, you could see the victim inmate walking out with a towel.  
23 I mean, you can't really see what is going on because the door  
24 is closed, but that is another situation -- I appreciate it is  
25 not proof beyond a reasonable doubt. It is something at least

1 for the Court to consider the thought processes that Mr.  
2 Cushingberry goes through under stress.

3 Being incarcerated is stressful. I will not sit here  
4 and say that it is not, and being in that setting is different  
5 than being on the outside. But it is still indicative of a  
6 pattern of a willingness to do something that is not right in  
7 the face of stress, and that is something that the public  
8 simply cannot have in society at this time.

9 So a sentence commensurate with the Government's  
10 recommendation would serve that particular sentencing need  
11 well, and it would give him the time to continue his  
12 reflection, his path to redemption, and the things and tools  
13 that he needs to go forward with his life because he will have  
14 a life after this. His story is not over. His child's story  
15 is not over. The love of his life's story is not over. His  
16 family's story is not over like Angela Summers' life is over.

17 There is hope. There is a chance, but in the  
18 meantime, there must be a sentence to justify because all of  
19 the other sentencing factors that I have discussed. In  
20 sentencing disparities, I think this is the trickiest one as  
21 far as factors go, and I, I will conclude on this.

22 I have looked at the statistics provided by the  
23 Defense counsel, have read the submissions. I have tried to  
24 look up some Sentencing Commission's statistics as well for  
25 this district, as well as the Seventh Circuit, basically.

1 There is simply not a lot of data there to go off of as far as  
2 sentencing trends go, particularly in the Southern District of  
3 Indiana where I don't believe there were any sentences of any  
4 meaningful -- or at least not reported in the Sentencing  
5 Commission in those stats.

6 So I will just -- generally speaking about this place  
7 where we live and this place where Angela served and this  
8 state, and if convicted of a similar crime for someone that was  
9 not working as a federal employee and it wasn't on account of  
10 his or her duties, Mr. Cushingberry would be facing 45 to 65  
11 years in a state court and Detective Keedy can attest to that  
12 as well. He has investigated many cases that don't make it  
13 here. No cases make it here.

14 This is a crime strictly because of who Angela was,  
15 her job, and what she did. And anywhere else in the state,  
16 anywhere else down the street, in the new Community Justice  
17 Center, Mr. Cushingberry would be facing significant more  
18 sentence of mandatory minimums; and here, Your Honor, you have  
19 the broadest discretion in sentencing. The term -- any term of  
20 years or life is how the statute reads for second-degree  
21 murder. That is all or nothing. That, that is the ultimate  
22 discretion that the Court has, and I just wanted to highlight  
23 for Your Honor. And I know your time as state judge you have  
24 sentenced cases like this before. I don't know if I have ever  
25 worked on something more tragic than this, especially from my

1 time there.

2 But essentially, there is a disparity in the treatment  
3 of these types of cases in this state, and I think between that  
4 and the Federal Government. And I think the Government's  
5 recommendation balances that. It takes into consideration the  
6 mitigation that has been offered, and it takes into  
7 consideration all of the other sentencing factors: The just  
8 punishment, the seriousness of the offense, and the most, I  
9 guess, I guess the most just way to end this and for everyone  
10 to try and move forward and begin to heal as best they can.  
11 Thank you.

12 THE COURT: Thank you, Mr. McGrath.

13 So let me say first to [REDACTED] and KD, that you  
14 have the Court's extreme sympathy. You have both made very  
15 eloquent statements to the Court that I have carefully  
16 considered, and I want you to be mindful of that.

17 I also want to thank the individuals who participated  
18 in the video and supported Mr. Cushingberry, who gave me their  
19 insights into their experience with him and probably,  
20 particularly Nakayla, I think you are going to be -- you are  
21 probably, but you are a terrific person and a terrific mom and  
22 he was very lucky. He is very lucky to have you in his life.  
23 You have a spark that is, that is very, very impressive, and I  
24 am sorry for you that you are going to have to raise your baby  
25 alone. But as Mr. Cushingberry noted, and I tell people this

1 all the time. You can be a dad from prison. It is not easy,  
2 but you can be a dad from prison. Many, many people don't even  
3 put forth the effort, but I have faith that you will.

4 So let me go through the factors that are listed in  
5 the federal sentencing statute. To impose a sentence that is  
6 sufficient, but not greater than necessary, which is what  
7 ultimately the law requires. So the first is the nature and  
8 circumstances of the offense, and the Government used the word  
9 "tragedy." I will use the word "senseless tragedy" because  
10 that is what this was, a senseless tragedy; senseless in a  
11 whole host of ways. First of all, the extreme overreaction,  
12 the hypervigilance that has been acknowledged, the  
13 confrontation that was unnecessary when there was information  
14 about how this problem could have been solved in a peaceful  
15 way.

16 It is not on you, Mr. Cushingberry, why it wasn't,  
17 except for the ultimate thing that happened at the end, but  
18 murder is the most serious crime. And the reason it is is  
19 because of the holes that it leaves in people's lives, and we  
20 have heard a lot about some holes that you have in your life  
21 because of your upbringing. And there is therapy, and there is  
22 ways for you to get help, but there is a gaping hole that is  
23 now left in this child's life here. She has got great support  
24 and another mom who loves her, but the senselessness of what  
25 has happened will be difficult for her to get her head around

1 and just the overreaction in terms of the nature and  
2 circumstances of the offense.

3 I reread the complaint this morning and the affidavit,  
4 and you told the officers you were 6 feet from her. That would  
5 be about, about me and my courtroom deputy here when you shot  
6 her. It is right there. She was just right there in front of  
7 you, and that makes it really frightening to me.

8 Your history and characteristics are utterly -- talk  
9 about tragedy, utterly tragic. It is not lost on me that your  
10 mother has now left the courtroom. You did an amazing job  
11 living through all of that trauma and all of that violence and  
12 all of that responsibility, an amazing job, and you exhibited  
13 it in school and the way your teachers and your coaches and  
14 your classmates saw how you overcame everything. But there, as  
15 your lawyer described it, there is a toxicity with your  
16 relationship with your mom. And it causes you to behave in  
17 ways you don't otherwise, and I think the Government made a  
18 good point in drawing the line between protector and avenger.

19 And that was a very wrongheaded decision that you made  
20 on that day, but the mitigation evidence is significant. You  
21 aren't the most damaged, hurt, wounded child I have seen, but  
22 you are close. You are close. There is no doubt about it, and  
23 so you do -- the Court finds in mitigation complex trauma,  
24 PTSD.

25 Your youth is not necessarily considered except for

1 the fact that I know that you do not have a fully developed  
2 brain. It has been developing over the past three years, and  
3 you have a couple more years, probably a couple more than that  
4 above the average because of everything that you went through  
5 as a child. You have shown an incredible capacity to love in  
6 your life, which is pretty remarkable, but I can't help but  
7 think about your history and characteristics.

8 The statements -- I think the Dalai Lama made the  
9 statement about ripples. You know, you did something that has  
10 made a ripple, and it has caused a ripple of pain and loss and  
11 heartache and not just in your family, who are here and  
12 devastated, I am sure, but for this family that has lost their  
13 person. And your family can still have contact with you. They  
14 cannot, and that ripple is really significant because it is not  
15 fair for trauma to be given away from you to KD.

16 Now, she is traumatized. Now, she is experiencing  
17 PTSD from losing her mom, and it is very, as you know, it is  
18 very consequential. It isn't as repetitive as what you had to  
19 go through. It isn't as violent as what you had to go through  
20 in your life, but it is very real. And I just talked about  
21 that in the context of your history and characteristics, and I  
22 really should talk about it as I did in the nature and  
23 circumstances of the crime where the law allows me to consider  
24 the impact on the victims. And I note that both of them were  
25 gracious in not asking for what people often do in terms of

1 retribution. They were gracious, and many of the people who  
2 wrote letters for you asked me to give grace, give grace to  
3 you. So it is something I am thinking about.

4 But I have to consider about a just punishment. That  
5 is ultimately what everybody in the law hopes for is a just  
6 punishment, and I have to think about, then, two things: The  
7 harshness of the crime and your reaction in these  
8 circumstances, the impact it had on the victims. And those two  
9 things in terms of a just punishment weigh heavily on me.

10 So I need to make sure that you are punished. That is  
11 going to happen one way or the other. There was only slight  
12 provocation in this case, though. Yes, she sprayed the mace.  
13 I don't know why you brought the gun over there, maybe you  
14 always carried it, it was lawful for you to have it. That is  
15 not the point, but it was just such a huge overreaction.

16 So I am looking at some of the things that the statute  
17 also requires. So the seriousness of the offense I have talked  
18 about. Respect for the law, I very much appreciated at the end  
19 of your statement you are apologizing for your flight because  
20 you did flee after this happened, and you said, "I should have  
21 stuck around" and you should have stuck around. But once  
22 confronted by law enforcement and after your lawyer arrived,  
23 you did confess, and so that is a pretty quick showing of  
24 respect for the law.

25 Deterrence is a tricky aspect in your case. Specific

1 deterrence means what can I do to make sure you don't hurt  
2 anybody else; and then, there is general deterrence. And that  
3 is where my consideration of what -- everybody from the postal  
4 community said to me. All these people are trying to do is  
5 bring mail, and when they get confronted by people who refuse  
6 to put up dogs or who give them attitudes or give them a hard  
7 time, they are not allowed to carry a firearm.

8 They get the -- they get the mace, if I read the  
9 letters correctly. That is all they get is the dog repellent  
10 because I am sure their employers don't want them being  
11 involved in situations with guns, but especially during April  
12 of 2020 when none of us knew if we were going to live or die.  
13 And they had to go to work every day, and for them to be  
14 confronted and the fear that they had, that is why this case  
15 got national attention is because these folks had no choice.

16 They had to leave their job or go to work, one or the  
17 other; and now, the place where Miss Summers worked is a place  
18 where nobody wants to work because it is considered too  
19 dangerous. So deterrence, general deterrence does apply in  
20 your case. I am usually not a big fan of general deterrence,  
21 but I do need to make sure that the sentence in your case says  
22 to other people, in essence, don't mess with the mailman or the  
23 mailwoman. Just let them do their job and be on their way.

24 To protect the public from further crimes of the  
25 Defendant, here is the other complicated part about your case.

1 Everything your lawyer says is true about the trauma and the  
2 violence that you experienced and its impact on yourself and  
3 your brain and your hypervigilance, but how do I know when --  
4 if something like this isn't going to happen? And I need to  
5 make sure that you have time to grow up some and put all of  
6 this in the very distant past because that is of concern to me.

7 I will talk about Clark County because I saw it. I  
8 don't see any evidence on that that you struck that other  
9 person, but I am pretty sure it was you, as the Government  
10 said, who got the trashcan, then, came out and got a bag for  
11 the trashcan and then, filled the bag in the trashcan and who  
12 looks like, to me, was standing up the door holding up the  
13 towel so we couldn't see what was going on in there. Whether  
14 you beat that other guy or not, that is not a reactive  
15 situation to me. That is a more thoughtful situation because  
16 there were 15, 16 other guys just kind of milling about.

17 One guy opened the door, whoa, closed the door, backed  
18 off of the situation, wouldn't go in there. So that concerns  
19 me, and I recognize what your lawyer says and recognize the  
20 good progress that you have shown with the classes that you  
21 have submitted. And they have kept you there so they haven't  
22 asked the marshal to move you so that is probably a sign they  
23 think that you are respectful and okay, but I really wish that  
24 hadn't happened because it makes me wonder about your thought  
25 process.

1           There are programs that we can help you in. I am glad  
2 you suggested the BRAVE program. I think it would be an  
3 appropriate program for him, given his age. There will be  
4 others, but there is all kinds of training and educational  
5 programming that you can participate in with your diploma,  
6 especially you should be able to get into higher education  
7 classes while you are there.

8           I want to talk about disparity. I am not satisfied of  
9 the, the specificity of the, of the guidelines information  
10 because I don't know where the people started to know where  
11 they ended up on the guideline range, and so. And then, on the  
12 flip side of that, I looked up the Government's request for me  
13 to consider disparity vis-a-vis state sentences. The Circuit  
14 is very clear that that is an inappropriate use of that  
15 sentencing factor.

16           It is to avoid -- the goal of 18 U.S.C. 3553(a) (6) is  
17 to avoid unwarranted sentencing disparities among italicized  
18 federal defendants, and that is *United States v. Schmitt*, 495  
19 F.3d 860 -- well, it is *United States v. Williams*, citing  
20 *United States v. Schmitt*. And the *United States v. Williams*  
21 case is a 2022 case.

22           So I am not going to aggravate the sentence or vary  
23 upward because of the sentencing disparity. The choice to file  
24 here was the choice to file here so this is the scheme that we  
25 are going to have, but I am also not inclined to vary below the

1 guidelines because I believe that with respect to the nature  
2 and circumstances of the offense, the impact on the victims,  
3 and the senselessness of this crime, the guidelines account  
4 for -- the guidelines don't necessarily account for everything.  
5 But the way, what I consider there to be some aggravating  
6 factors in this case, which was the absolute senselessness of  
7 what happened and the risk that Miss Summers was under because  
8 of COVID, that is somewhat aggravating.

9           And I think the impact on the victim, which the  
10 Circuit also says can be relied upon to vary upward, is  
11 aggravating. But I am not going to use it to vary upward. I  
12 am going to use all that to say I think it balances out, and a  
13 guideline sentence is appropriate.

14           Angela Summers was 45 years old on the day that she  
15 died, almost 46, and her life expectancy for the State of  
16 Indiana -- I did, taking judicial notice of the federal life  
17 expectancy tables -- is 75. And the Court concludes that a  
18 sentence of 360 months, which is within the guidelines, is an  
19 appropriate sentence in this case. That is 30 years, Mr.  
20 Cushingberry, which I believe is an appropriate measure of the  
21 loss and harm inflicted in this case. So I will go ahead and  
22 state the proposed sentence at this time.

23           Pursuant to the Sentencing Reform Act of 1984, it is  
24 the judgment of the Court that the Defendant, Tony  
25 Cushingberry, also known as Tony Cushingberry-Mays, is hereby

1 committed to the custody of the Bureau of Prisons to be  
2 imprisoned for a term of 360 months for the reasons just  
3 stated.

4           The Court will recommend participation in the BRAVE  
5 program, mental health treatment, including treatment for  
6 trauma, substance abuse treatment, including RDAP, cognitive  
7 behavioral training, vocational training, including CDL, higher  
8 education classes. The Court will also recommend, although I  
9 am not sure what the nature of the crime this will be honored,  
10 but I will recommend placement in a medium security facility.

11           The Court notes the Defendant -- there is no request  
12 for restitution in the case.

13           The Court will also order that a fine of \$1,000 be  
14 paid. The Court is ordering that fine in order to account for  
15 additional punishment within the guidelines and also to assist  
16 Mr. Cushingberry in getting a job. The Defendant shall --  
17 while in prison.

18           The Defendant shall forfeit a Glock, Model 19 Gen 5,  
19 9-millimeter Luger caliber semiautomatic pistol bearing Serial  
20 No. BGUK332 and any ammunition.

21           Supervised release is not required by statute, but the  
22 Court is imposing a three-year term of supervised release  
23 following Mr. Cushingberry's release from prison setting forth  
24 or incorporating, by reference, those conditions set forth in  
25 Paragraph 63 and 64 of the presentence investigation report.

1                   The Court is also ordering the Defendant to pay the  
2 mandatory special assessment of \$100. Payment of the fine and  
3 restitution are due immediately and are to be made directly to  
4 the clerk of the United States District Court.

5                   Counsel, do you have any legal objection to the  
6 sentence that I have proposed, or do you require any further  
7 elaboration of my reasons under Section 3553(a), Mr. McGrath?

8                   MR. MCGRATH: No, Your Honor.

9                   THE COURT: Ms. Varner?

10                  MS. VARNER: No, Your Honor.

11                  THE COURT: Is there any recommendation as to a  
12 placement location?

13                  MS. VARNER: Your Honor, if Your Honor is recommending  
14 that he may go to a medium facility, FCI Greenville.

15                  THE COURT: Okay. The Court will recommend FCI  
16 Greenville, and with that addition -- do they have BRAVE there?

17                  MS. VARNER: They do.

18                  THE COURT: Okay, great.

19                  All right. The Court will order the sentence imposed  
20 as stated.

21                  Mr. Cushingberry, you can appeal your conviction if  
22 you believe that your guilty plea was somehow unlawful or  
23 involuntary or if there is some other fundamental problem in  
24 the proceedings that was not waived by your guilty plea; do you  
25 understand?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right.

3 Normally you would have the right to appeal your  
4 sentence. However, you can give up that right as part of a  
5 plea agreement, and you have entered into a plea agreement  
6 which contains a waiver of your right to appeal. Do you  
7 remember us talking about that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. That waiver is generally  
10 enforceable, but if you believe it is not valid, you can  
11 present that theory to the Court of Appeals; do you understand?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: To begin an appeal you must file a notice  
14 of appeal within 14 days of the entry of judgment. Upon  
15 request, the clerk of court can prepare and file a notice of  
16 appeal. If you cannot afford the filing fee or cannot afford  
17 to pay a lawyer to appeal for you, the Court will appoint a  
18 lawyer to represent you on appeal. Do you have any questions  
19 about your appellate rights, your appellate waiver, or the time  
20 limit for filing a notice of appeal?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: All right.

23 Mr. McGrath, the remaining count?

24 MR. MCGRATH: Yes, Judge. We move to dismiss Count  
25 II.

1 THE COURT: Count II. Any objection, Ms. Varner?

2 MS. VARNER: No, Your Honor.

3 THE COURT: Count II is dismissed.

4 Is there anything further for the Government?

5 MR. McGRATH: No, Your Honor.

6 THE COURT: For the Defense?

7 MS. VARNER: No, Your Honor.

8 THE COURT: The Court orders the Defendant remanded to  
9 the custody of the United States Marshal. Good luck to you,  
10 Mr. Cushingberry.

11 THE CLERK: All rise.

12 (Concluded, 2:32 p.m.)

13 - - -

14 CERTIFICATE OF COURT REPORTER

15  
16 I certify that the foregoing is a true and correct  
17 copy of the transcript originally filed with the clerk of court  
18 on July 11, 2023, and incorporating redactions of personal  
19 identifiers requested by the following attorneys of record:  
20 Jayson W. McGrath, in accordance with Rule 49.1 of the Federal  
21 Rules of Criminal Procedure and Southern District of Indiana  
22 Rule 80-2.

23 Redacted characters appear as a black box in the  
24 transcript.

25

1  
2 S/s Jean A. Knepley  
3 Signature of Approved Transcriber

October 12, 2023  
Date

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